JOHN E. SCHREIBER (261558)
WINSTON & STRAWN LLP
333 S. Grand Avenue #3800
Los Angeles, CA 90071-1543
Telephone: (213) 615-1700
Facsimile: (213) 615-1750
Email: jschreiber@winston.com

JEFFREY L. KESSLER (*pro hac vice*)
A. PAUL VICTOR (*pro hac vice*)
GEORGE E. MASTORIS (*pro hac vice*)
WINSTON & STRAWN LLP
200 Park Avenue
New York, NY 10166-4193
Telephone: (212) 294-6700
Facsimile: (212) 294-4700
Email: jkessler@winston.com

Attorneys for Plaintiffs
HARMONI INTERNATIONAL SPICE, INC. AND
ZHENGZHOU HARMONI SPICE CO., LTD.

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HARMONI INTERNATIONAL SPICE, INC., a California corporation, and ZHENGZHOU HARMONI SPICE CO., LTD., a corporation,

Plaintiffs,

v.

WENXUAN BAI, an individual, et al.,

Defendants.

Case No. 2:16-cv-00614-BRO-ASx

Hon. Beverly Reid O'Connell

PLAINTIFFS' MOTION TO ALTER OR AMEND

Hearing: January 9, 2017
Time: 1:30 p.m.
Courtroom: 7C

TABLE OF CONTENTS

Page

MEMORANDUM OF POINTS AND AUTHORITIES 1

I. INTRODUCTION 1

II. BACKGROUND 3

A. The First Amended Complaint 3

B. The Second Amended Complaint 5

III. STANDARD OF LAW 6

IV. THE COURT FAILED TO CONSIDER OR ADDRESS WELL-PLED ALLEGATIONS IN THE SAC THAT SUFFICIENTLY ALLEGE DIRECT INJURY AND PROXIMATE CAUSE WITH RESPECT TO THE HUME AND MONTOYA DEFENDANTS 7

A. The Court Did Not Consider Material Facts Alleged in the Complaint Which Adequately Pled a Direct Injury To Plaintiffs 7

B. Supreme Court and Other Federal Precedent Makes Clear that the Type of Harm Alleged in the Complaint Provides a Direct Link Between the Conduct Alleged and Injuries Incurred Sufficient to Satisfy RICO's Proximate Cause Requirement 11

C. The Court's Theory of Attenuated Damages is Misplaced 13

V. IN THE ALTERNATIVE, PLAINTIFFS SHOULD BE GRANTED AT LEAST ONE OPPORTUNITY TO AMEND THEIR RICO ALLEGATIONS TO ADDRESS ANY DEFICIENCIES IDENTIFIED BY THE COURT 16

A. Courts Freely Grant Leave to Amend, Particularly Where Claims are Dismissed for the First Time 16

VI. CONCLUSION 20

TABLE OF AUTHORITIES

Page(s)

CASES

Assoc. Gen. Contractors v. Cal. State Council of Carpenters
459 U.S. 519 (1983)....................15

Balistreri v. Pacifica Police Dept.
901 F.2d 696 (9th Cir. 1990)....................20

Benamar v. Air-France-KLM
15–CV–02444–CAS(JPRx), 2015 WL 4606751 (C.D. Cal. July 31, 2015)....................17

Brausch v. Stryker Corp.
630 F.3d 546 (7th Cir. 2010)....................18

Bridge v. Phoenix Bond & Indemnity Co.
553 U.S. 639 (2008). FAC Order.................... passim

Commercial Cleaning Servs., L.L.C. v. Colin Servs. Sys., Inc.
271 F.3d 374 (2d Cir 2001)....................15

Conley v. Gibson
355 U.S. 41 (1957)....................16

Crimpers Promotions, Inc. v. Home Box Office
724 F.2d 290 (2d Cir. 1983)....................15

Eminence Capital, LLC v. Aspeon, Inc.
316 F.3d 1048 (9th Cir. 2003)....................17

Foman v. Davis
371 U.S. 178 (1962)....................16, 17, 20

Holmes v. Sec. Inv. Prot. Corp.
503 U.S. 258 (1992)....................15

Ill. Brick Co. v. Illinois
431 U.S. 720 (1977)....................15

McCalla v. Royal MacCabees Life Ins. Co.
369 F.3d 1128 (9th Cir. 2004)....................6

Mendoza v. Zirkle Fruit Co.
301 F.3d 1163 (9th Cir. 2002)....................14, 15, 20

Mid Atl. Tel., Inc. v. Long Distance Servs., Inc.
18 F.3d 260 (4th Cir. 1994)....................14

Miller v. Rykoff-Sexton, Inc.
845 F.2d 209 (9th Cir. 1988) 19

Nelson v. Equifax Info. Servs., LLC
522 F. Supp. 2d 1222 (C.D. Cal. 2007) 7

Netbula, LLC v. Distinct Corp.
212 F.R.D. 534 (N.D. Cal. 2003)....................19

Owens v. Kaiser Found. Health Plan, Inc.
244 F.3d 708 (9th Cir. 2001) 16

Schreiber Dist. Co. v. Serv-Well Furniture Co., Inc.
806 F.2d 1393 (9th Cir. 1986) 18

Stowers v. WinCo Foods LLC
2014 WL 1569474 (N.D. Cal. 2014) 17

Transcription Comm. Corp. v. John Muir Health
No. C 08-4418 THE, 2009 WL 666943 (N.D. Cal. Mar. 13, 2009) 12, 13, 14, 20

Turner v. Burlington N. Santa Fe R.R. Co.
338 F.3d 1058 (9th Cir. 2003) 7

U.S. ex rel., Lee v. Smithkline Beecham
245 F.3d 1048 (9th Cir. 2006) 18

United States v. $11,500.00 in U.S. Currency
710 F.3d 1006 (9th Cir. 2013) 18

Zimmerman v. City of Oakland
255 F.3d 734 (9th Cir. 2001) 7

Zucco Partners, LLC v. Digimarc Corp.
552 F.3d 981 (9th Cir. 2009) 18

STATUTES

18 U.S.C. § 1962(c) and (d)....................5

California Civil Procedure Code section 425.16 3

Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(c).................... passim

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 9, 2017, at 1:30 p.m., or as soon thereafter as the matter may be heard, in Courtroom 7C of the above-entitled court, located at 350 West 1st Street, Los Angeles, CA, 90012, Plaintiffs Harmoni International Spice, Inc. ("Harmoni") and Zhengzhou Harmoni Spice Co., Ltd. ("Zhengzhou Harmoni") (collectively, "Plaintiffs") will and hereby do move to alter or amend the Court's Order regarding Defendants' Motions to Dismiss Plaintiffs' Second Amended Complaint and Plaintiffs' Motion for Leave to Amend the Pleadings, dated November 14, 2016, pursuant to Federal Rule of Civil Procedure 59(e) and Local Rule 7-18. This Motion is made on the grounds that the Court's Order constituted clear error in two respects: first, the Court's failure to consider certain material factual allegations relevant to whether Plaintiffs' RICO claim was properly pled; and second, the Court's dismissal of Plaintiffs' RICO claim with prejudice where Plaintiffs were given no notice of any defects in that claim and deprived of an opportunity to replead.

This Motion is based upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the [Proposed] Order filed concurrently herewith, the records and files in this action, and any other written or oral submissions that may be presented at or before the hearing on this Motion.

Pursuant to Local Rule 7-3, Plaintiffs met and conferred with counsel for Defendants Robert T. Hume ("Hume"), Joey C. Montoya ("Montoya"), Stanley Crawford ("Crawford"), Avrum Katz ("Katz"), Huamei Consulting Co., Inc. ("Huamei"), Kwo Lee, Inc. ("Kwo Lee"), and Shuzhang Li ("Li") (collectively, "Defendants") on November 29, 2016. Defendants indicated that they intend to oppose this Motion.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On November 14, 2016, the Court issued its Order granting Defendants' motions to dismiss the Second Amended Complaint with prejudice (the "SAC Order"). In relevant part, the Court held that Plaintiffs had failed to adequately plead that the predicate acts engaged in by Defendants Hume, Huamei, Kwo Lee and Li (the "Hume Defendants") and Montoya, Crawford, and Katz (the "Montoya Defendants") had proximately caused the injuries alleged by Plaintiffs. The Court also held that, in contrast to the other Defendants, neither Li nor Huamei were alleged to have engaged in a "pattern" of racketeering activity.

Plaintiffs respectfully submit that the SAC Order was clearly erroneous in two respects, and should thus be amended to either (1) deny Defendants' motions to dismiss in their entirety or (2) provide Plaintiffs with at least one chance to replead and cure any deficiencies in their Complaint.

First, in holding that Defendants failed to adequately plead proximate cause, the Court described the injury alleged by Plaintiffs as having resulted solely from "lost sales caused by the increased competition in the garlic market." Order at 33. The Court reasoned that, because such "lost sales" might have been caused by any number of other factors, Plaintiffs had failed to meet their burden. In ruling as it did, however, the Court appears to have bypassed entirely a number of material, specific allegations regarding the *direct* harm visited upon Plaintiffs by Defendants' predicate acts. These include, but are not limited to: (1) the cost of opposing the sham review requests filed by Defendants before the U.S. Department of Commerce ("DOC" or "Commerce"); (2) the reputational harm caused to Plaintiffs by the false and fraudulent statements made by Defendants to the DOC and thus to Harmoni's customers; and (3) the business and profits lost by Harmoni as a result of its customers reading those statements and choosing to take their business elsewhere as a direct result.

Critically, none of these specifically pled allegations of direct harm relate to

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

"lost sales caused by increased competition." To the contrary, they all describe *direct pecuniary and reputational harm* upon which the Court previously relied in holding that Plaintiffs had adequately pled their injuries were proximately caused by Defendants' racketeering activities. Those allegations were transferred—virtually unchanged—from the FAC to the SAC. But in dismissing the SAC, the Court failed to consider those direct injuries to Harmoni *at all*, instead focusing exclusively on the wholly distinct set of damages suffered by Harmoni as a result of the Enterprise's fraudulent introduction of underpriced garlic into the U.S. market (injuries which, moreover, were primarily caused by "funneling" conduct engaged in by Defendants, like C Agriculture Group Corp., who were previously dismissed, or other members of the Enterprise who have still not been served). This was clear error, and thus constitutes good cause for reconsideration and amendment of the SAC Order.

Second, even assuming, *arguendo*, that the Court was correct in holding that Plaintiffs had failed to adequately plead facts plausibly to show that their injuries were proximately caused by Defendants' conduct (and that Huamei and Li had each only committed one predicate act), it erred in dismissing the SAC with prejudice and thus depriving Plaintiffs of even a single opportunity to cure its deficiencies. Simply put, Plaintiffs were never given *any* notice that their RICO allegations might be inadequate; to the contrary, the Court had held that the FAC—which involved identical allegations regarding injury and proximate cause—did in fact state a claim under RICO against the Hume Defendants, and met the proximate cause requirement against the Montoya Defendants (who were previously dismissed only on jurisdictional grounds). Accordingly, Plaintiffs made no attempt to buttress their RICO allegations as against the Hume or Montoya Defendants between the FAC and the SAC, and instead naturally focused on remedying the narrow jurisdictional issue identified by the Court in dismissing the FAC. Accordingly, dismissing Plaintiffs' RICO claims with prejudice also constituted clear error. In addition to being inequitable and unjust, it also conflicted with the Ninth Circuit's clear directive that leave to amend should be "freely given." Nor would amendment be futile; if required, Plaintiffs could add new and more detailed allegations regarding both proximate cause and additional predicate acts resulting in direct injury to Harmoni.

II. BACKGROUND

A. The First Amended Complaint

Plaintiffs initiated this action with the filing of the original Complaint on January 27, 2016. Dkt. No. 1. On March 4, 2016, Plaintiffs amended their original Complaint as of right and filed the FAC alleging violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962(c), and other various violations of California state law. Dkt. No. 26.

Distilled to its essence, Plaintiffs' FAC alleged that Defendants are members of an unlawful enterprise aimed at destroying Plaintiffs' business and reputation (the "Enterprise"). SAC ¶¶ 1. Specifically, Defendants engaged in at least two separate and distinct types of predicate acts in furtherance of the Enterprise's goals: (1) the filing of false and fraudulent statements with the DOC meant to damage Plaintiffs' business and reputation and perpetuate a sham review request of Zhengzhou Harmoni; and (2) the submission of forged bills of lading and other fraudulent documents to the U.S. Customs and Border Protection ("Customs") in an effort to illegally secure lower dumping rates and thus a greater share of the U.S. fresh garlic market (*i.e.*, the "funneling" allegations). SAC ¶¶ 12, 27.

On March 18, 2016, the C Agriculture Defendants moved to dismiss the FAC pursuant to Rules 12(b)(6) and 12(f), and filed an anti-SLAPP motion pursuant to California Civil Procedure Code section 425.16. Dkt. No. 37. That same day, the Hume Defendants and Montoya Defendants also moved to dismiss the FAC pursuant to Rule 12(b)(6), with the latter group also moving to dismiss for lack of personal jurisdiction under Rule 12(b)(2). Dkt. Nos. 44-45. The Hume and Montoya Defendants also jointly filed an anti-SLAPP motion pursuant to California Civil Procedure Code section 425.16 and moved to strike certain claims pursuant to Federal

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

Rule of Civil Procedure 12(f). Dkt. No. 48.

On May 24, 2016, the Court granted the C Agriculture Defendants' and the Hume and Montoya Defendants' anti-SLAPP motions, thereby dismissing Plaintiffs' state law claims with prejudice. Dkt. No. 98 ("FAC Order") at 41. In addition, the Court granted the C Agriculture Defendants' Rule 12(b)(6) Motion as to Plaintiffs' RICO claim, finding that Plaintiffs had not established a pattern of racketeering activity with respect to those Defendants and granting leave to amend to allege additional predicate acts. *Id*. at 46.

As for the remaining Defendants, the Court reached a very different conclusion. First, the Court granted the Montoya Defendants' Rule 12(b)(2) Motion, but gave Plaintiffs leave to amend their Complaint to add allegations regarding the propriety of the Court's exercise of jurisdiction over Messrs. Crawford, Katz and Montoya under RICO's nationwide jurisdiction provision. *Id*. at 24. Second, the Court denied the Hume Defendants' Rule 12(b)(6) Motion *in its entirety*, finding that, even under the heightened pleading standard of Rule 9(b), Plaintiffs had met their burden of pleading each of the elements of a RICO violation, including (1) the existence of an enterprise, (2) a pattern of racketeering activity, and (3) injury to Plaintiffs (4) proximately caused by the alleged RICO violation. *Id*. at 44-50. And, although the Court's Rule 12(b)(2) dismissal of the Montoya Defendants mooted its consideration of the substantive RICO elements, the Court signaled that the RICO allegations against those Defendants—which were virtually identical to those against the Hume Defendants—would be sufficient to state a claim once Plaintiffs established personal jurisdiction. *Id*. at 45.

With respect to the proximate cause element at issue here, the Court's FAC Order specifically addressed Defendants' argument that Plaintiffs had not adequately pled an injury proximately caused by the purported RICO violation because only the DOC—not Plaintiffs—had allegedly been defrauded. The Court began by noting that the Supreme Court had "faced a strikingly similar argument" in *Bridge v. Phoenix*

Bond & Indemnity Co., 553 U.S. 639 (2008). FAC Order at 47. As the Court explained, although the plaintiffs in that action had not themselves relied on the misrepresentations at issue, they had adequately pled a proximately caused injury because they alleged loss of "valuable liens they . . . would have been awarded" absent those misrepresentations. *Id.* at 48 (quoting *Bridge*, 553 U.S. at 649). The Court applied that same logic in rejecting the argument advanced by the Hume and Montoya Defendants. Specifically, it held that "the instant action is closely analogous to *Bridge* with respect to *both proximate cause and injury*" because of Plaintiffs' allegations that the acts of mail and wire fraud perpetrated by Defendants had caused Plaintiffs to spend a great deal of money opposing the review requests engineered by the Enterprise and directly harmed Plaintiffs' business and reputation amongst their customers. FAC Order at 48 (emphasis added).

B. The Second Amended Complaint

On June 24, 2016, Plaintiffs filed their SAC, alleging violations of 18 U.S.C. § 1962(c) and (d). Dkt No. 98.[1] In addition to alleging facts demonstrating that personal jurisdiction over the Montoya Defendants under RICO's nationwide jurisdiction provision was appropriate, the SAC also attempted to cure the pleading deficiencies identified by the Court with regard to C Agriculture Group Corp. ("C Agriculture"), Jin Xia Wen ("Wen"), and Mingju Xu ("Xu") (collectively, the "C Agriculture Defendants"). Specifically, Plaintiffs added a number of "funneling" allegations, alleging that those Defendants had submitted false bills of lading to Customs, thus enabling them to import garlic more cheaply and cutting into Plaintiffs' profits. Given the Court's prior holding that Plaintiffs' RICO allegations against the Hume Defendants had been adequately pled (and its suggestion that the same was true

[1] In addition to the C Agriculture, Hume, and Montoya Defendants, Plaintiffs served Defendant Wenxuan Bai ("Bai") with the SAC. Bai filed a motion to dismiss the SAC on August 8, 2016. Dkt. No. 123. In its November 14, 2016 Order, the Court held that Bai had not been properly served, as it could find no precedent allowing for substituted service at a foreign defendant's place of business. Dkt. No. 163 at 22 (granting Plaintiffs leave to amend with respect to Bai). Plaintiffs are still in the process of serving Bai, along with the other foreign defendants, pursuant to the Hague Convention.

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

with regard to the Montoya Defendants), Plaintiffs left those allegations—which had nothing to do with "funneling" but were instead focused on the reputational and pecuniary injury that were directly caused by Defendants' false statements to Commerce—alone, so that they remained virtually identical between the FAC and the SAC.

On July 11, 2016, the C Agriculture Defendants filed a Motion to Dismiss the SAC (Dkt. No. 108), which the Court granted on August 5 (Dkt. No. 121). The Court rejected the sufficiency of the C Agriculture "funneling" allegations, holding that "the connection between Plaintiffs' alleged harm of lost sales and profits that was purportedly caused by the C Agriculture Defendants' Customs submissions is too attenuated to satisfy the proximate cause requirement." Dkt. No. 121 ("C Ag. Order") at 23. Plaintiffs did not move to alter or amend that Order.

Several days after that decision was entered, on August 10, Defendant Hume filed a Motion to Dismiss the SAC (Dkt. No. 125), as did Defendants Montoya, Crawford, Katz, Kwo Lee, Li and Huamei (Dkt. No. 126). Those Motions were granted on November 14. Dkt. No. 163 ("SAC Order"). Although Plaintiffs had met their burden of adequately pleading personal jurisdiction over the Montoya Defendants, the Court "reassessed" its ruling on the FAC and concluded that the SAC's allegations now failed to establish either that Defendants' conduct satisfied RICO's proximate cause element or that Huamei and Li had engaged in a pattern of racketeering activity. *Id.* at 27-29, 31-34.

III. STANDARD OF LAW

Federal Rule of Civil Procedure 59(e) permits a court to alter or amend a judgment previously entered upon a motion of a party made within 28 days of the entry of judgment. Fed. R. Civ. P. 59(e); *see* *McCalla v. Royal MacCabees Life Ins. Co.*, 369 F.3d 1128, 1128 (9th Cir. 2004) (applying Rule 59(e)'s previous ten-day filing deadline). Generally, alteration or amendment is appropriate under Rule 59(e) if (a) the district court is presented with newly discovered evidence, (b) the district court committed a clear error or made an initial decision that was manifestly unjust, or (c) there is an intervening change in controlling law. *Zimmerman v. City of Oakland*, 255 F.3d 734, 740 (9th Cir. 2001). Similarly, the Local Rules for the Central District of California allow for reconsideration of a decision upon (a) "a manifest showing of a failure to consider material facts presented to the Court before such decision," (b) "the emergence of new material facts or a change of law occurring after the time of such decision," or (c) "a material difference in fact or law from that presented to the Court before such decision that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of the decision." Cent. Dist. Cal. L. R. 7-18.

Rule 59(e) offers relief from decisions made on a broad range of motions, including dismissals pursuant to Rule 12(b), which fall within the rule's requirement that a movant may request a "substantive alteration of the judgment." Wright & Miller, Fed. Prac. & Proc. § 2810.1. Accordingly, Rule 59(e) "provides an efficient mechanism by which the trial court can correct an otherwise erroneous judgment without implicating the appellate process." *Nelson v. Equifax Info. Servs., LLC*, 522 F. Supp. 2d 1222, 1237 (C.D. Cal. 2007) (citing *Clipper Exxpress v. Rocky Mt. Motor Traffic Bureau*, 690 F.2d 1240, 1249 (9th Cir. 1982)). A motion made pursuant to Rule 59(e) thus enables the trial judge to reconsider the validity of the judgment, and vacate or alter it as she sees fit. *Nelson*, 522 F. Supp. 2d at 1237. A district court has considerable discretion when considering a motion to amend a judgment under Rule 59(e) where the motion demonstrates that the previous disposition was clearly erroneous. *Turner v. Burlington N. Santa Fe R.R. Co.*, 338 F.3d 1058, 1063 (9th Cir. 2003).

IV. THE COURT FAILED TO CONSIDER OR ADDRESS WELL-PLED ALLEGATIONS IN THE SAC THAT SUFFICIENTLY ALLEGE DIRECT INJURY AND PROXIMATE CAUSE WITH RESPECT TO THE HUME AND MONTOYA DEFENDANTS

A. *The Court Did Not Consider Material Facts Alleged in the Complaint Which Adequately Pled a Direct Injury To Plaintiffs*

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

In its FAC Order, the Court held that Plaintiffs had adequately pled proximate cause. By the time of the SAC Order, however, the Court had "reassessed" its prior opinion and concluded they had not, despite the fact that the allegations in the FAC regarding proximate cause and injury were all repeated in the SAC. The Court had it right the first time.

In tracing the manner in which the Court was led into error on its SAC Order, it is instructive to first examine the Court's intervening decision dismissing Plaintiffs' claims against the C Agriculture Defendants. There, the Court "determined that the instant *action* is more like *Anza* than *Bridge*, because the harm suffered by the Plaintiff here is more like the harm suffered by the plaintiffs in *Anza*." SAC Order at 32 (emphasis added). The Court then went on to equate the allegations against the C Agriculture Defendants in this "action" with those against the Hume and Montoya Defendants:

> Namely, the plaintiff in *Anza* alleged that it was harmed by the lost sales caused by the defendants' ability to charge lower prices due to its fraudulent practice of omitting sales tax and hiding that fact by submitting fraudulent tax returns. Similarly, here, Plaintiffs allege that they have been harmed by *lost sales caused by the increased competition in the garlic market*, which was made possible by the Defendant Hume's and Moving Defendants' allegedly fraudulent DOC filings and funneling, because those activities allowed the Chinese garlic exporters and growers *to increase the Chinese garlic enterprise members' market share* in the United States.

SAC Order at 33 (emphasis added).

The problem is that the allegations regarding injury and proximate cause against the C Agriculture Defendants were far more limited and *fundamentally different* than those against the Hume and Montoya Defendants, a fact which those latter Defendants deliberately (and successfully) obfuscated in their briefing on the SAC. In other words, it was error for the Court to speak of the "instant action" as involving a single mechanism of injury (*i.e.*, increased competition in the garlic market leading to lost sales). To the contrary, the "instant action" comprises *several* separate and distinct ways in which Plaintiffs were injured. One, of course, is "funneling," by which the C

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

Agriculture Defendants and several of the Chinese Defendants submitted falsified documentation to Customs in order to achieve lower dumping rates, which in turn enabled them to sell garlic at below-market prices and injure Harmoni. The others, however, involve explicit allegations that the filings to the Commerce Department *themselves* resulted in injury to Harmoni—not by enabling Defendants to sell goods more cheaply and undercut Harmoni (as the Court concluded), but by (1) damaging Harmoni's reputation amongst its customers and third parties, costing it valuable goodwill; (2) causing customers to reduce their purchases from Harmoni because they were concerned about Defendants' allegations of forgery on Harmoni's part; and (3) forcing Harmoni to spend vast amounts of time and money attempting to correct the record and opposing the sham review requests filed by Defendants Crawford and Katz at the behest of the Chinese Garlic Association.

Tellingly, in discussing Plaintiffs' allegations of injury in the SAC, the Court cites *only* to those paragraphs which concern the first category of allegations (namely, SAC ¶¶ 299 and 302, both of which deal with "funneling"), but fails to mention even *one* of the many specific SAC paragraphs which allege facts—in detail—that plausibly set forth these much more direct forms of injury:

- "Like Crawford's withdrawn 2014 review request, the Coalition's 2015-2016 request and submissions constitute another effort by Defendants to force a *costly and burdensome review* of Zhengzhou Harmoni by the DOC under false pretenses and based on false allegations. It is a sham proceeding *designed to inflict direct injury on both Plaintiffs*, including by the hopes for extortion of money to have the review request withdrawn." SAC ¶ 272; *see also* FAC ¶ 243 (emphasis added).

- "The Coalition's false and fraudulent requests and submissions were also *made for the purpose of defaming and injuring Plaintiffs* and did not serve a necessary, useful, or good faith step in a legitimate DOC review process." SAC ¶ 273; *see also* FAC ¶ 244 (emphasis added).

- "*As a further direct result* of the fraudulent statements contained in Crawford and Katz's public submissions, Harmoni's business reputation *has been harmed*. In addition, Harmoni *has incurred significant expenses, including legal fees, in defending itself* against this sham proceeding and the fraudulent statements made regarding its business practices." SAC ¶ 274; *see also* FAC ¶ 246 (emphasis added).

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

- "Defendants' violations of federal law and their pattern of racketeering activity have directly and proximately caused Plaintiffs to be injured in their business and property, including in an amount of lost sales and profits to be determined at trial. These injuries were proximately caused by Defendants' actions which were targeted at Plaintiffs and no one else." SAC ¶ 310; *see also* FAC ¶ 274.

- "Defendants have also made a series of false or fraudulent statements regarding Harmoni and Zhengzhou Harmoni *in order to damage Plaintiffs' relationships with both their customers and the U.S. government*, and with the extortionate intent of forcing Plaintiffs to pay millions of dollars for Defendants to cease engaging in such unlawful conduct." SAC ¶ 11 (emphasis added).

- "Crawford and Hume knowingly and intentionally made these false claims and submitted the forged certificates in furtherance of the Enterprise's scheme to *destroy Zhengzhou Harmoni's reputation among its customers and the public* and to try to either have Zhengzhou Harmoni's zero cash deposit rate revoked in order to increase the Chinese Garlic Association's share of the U.S. market or to obtain extortionate payments from Plaintiffs to withdraw the review request." SAC ¶ 255 (emphasis added).

- "The Coalition's November 28th review request, along with subsequent filings dated December 3, 2015 and February 22, 2016, contained a number of false and fraudulent statements *aimed at destroying Plaintiffs' reputation* amongst its customers, as well as causing Zhengzhou Harmoni, which has consistently complied with U.S. antidumping laws, to *undergo a burdensome administrative review process* and potentially lose its zero rate as a result of the fraudulent representations made by the Coalition." SAC ¶ 265 (emphasis added).

The Court's failure to consider these material allegations (and others like them, *see, e.g.*, SAC at ¶¶ 268, 275) constituted clear error. Had it done so, the Court would have reached the same conclusion that it did when holding that the FAC—which alleged the *exact same categories* of direct injury—stated a claim under RICO as against the Hume Defendants (and would have been sufficient against the Montoya Defendants as well).[2] As discussed in the section below, not only are the categories of injury enumerated above (with the possible exception of the funneling allegations)

[2] *See, e.g.*, FAC ¶¶ 243-246, 274 (Plaintiffs allege that they were harmed by the purportedly fraudulent statements sent to the DOC because the allegedly false statements have harmed their business reputation, leading to lost profits; and because Plaintiffs will incur significant monetary costs in responding to the review and potentially lose their zero duty rate.). These allegations are repeated almost verbatim in the SAC. *See* SAC ¶¶ 272-274, 310.

"far more akin" to *Bridge* than to *Anza*, they are also of a type that courts have consistently held sufficient to satisfy RICO's proximate cause requirement.

B. *Supreme Court and Other Federal Precedent Makes Clear that the Type of Harm Alleged in the Complaint Provides a Direct Link Between the Conduct Alleged and Injuries Incurred Sufficient to Satisfy RICO's Proximate Cause Requirement*

In *Bridge v. Phoenix Bond & Indem. Co.*, the plaintiff alleged that the defendant's misrepresentations to a county agency led to the defendant being awarded liens that could otherwise have been granted to the plaintiff. 553 U.S. 639 (2008). Specifically, the plaintiff alleged that the defendant, one of its competitors, engaged in a pattern of mail fraud by lying to the county about its violations of the single simultaneous bidder rule and thereby preventing the plaintiff from obtaining the same bids. *Id.* The court determined that "[i]f the rival businesses lose money as a result of the misrepresentations, it would certainly seem that they were injured in their business 'by reason of' a pattern of mail fraud, even if they never received, and therefore never relied on, the fraudulent mailings." *Id.* at 649-50. As such, the court found the plaintiff had adequately established proximate cause. *Id.*

If anything, the injuries alleged here are even more direct than those in *Bridge*. As discussed above, Defendants' predicate acts of mail and wire fraud *directly damaged* Plaintiffs' reputation with its U.S. customers, who were informed of false allegations regarding Plaintiffs' business practices; caused those customers to reduce their purchases from Harmoni as a result of their concerns; and forced Zhengzhou Harmoni to bear the expense of opposing a sham review request. SAC ¶¶ 10, 129, 255, 272-274, 302. To borrow language from *Bridge*, Plaintiffs lost goodwill, profits, cash reserves, and time "by reason of" Defendants' misrepresentations. SAC ¶ 310.

Anza v. Ideal Steel Supply Corp., the other Supreme Court case at the center of the Court's analysis (and one decided two years *prior* to *Bridge*), was very different. There, the plaintiff alleged that the defendant did not charge sales tax to its cash-paying customers, which allowed it to lower its prices, undercut plaintiff, gain a larger share of the market place and ultimately drive the plaintiff out of business. 547 U.S.

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

451, 454-55 (2006). Plaintiff's RICO claim in that case was thus at least one step further removed from those in *Bridge* or the non-funneling allegations in the instant action, both of which more directly harmed the injured party. (As this Court observed, the funneling allegations based on C Agriculture's false submissions to Customs do bear some similarities to those in *Anza*—one reason why Plaintiffs did not move for reconsideration of that Order.) Critically, the Court in *Anza* also relied upon the fact that the lower prices in question could have been caused "for any number of reasons unconnected to the asserted pattern of fraud" and thus that determining whether they were actually caused by the fraudulent acts in question would require a "complex assessment." *Id.* at 438-59. Here, again, Plaintiffs have clearly alleged that it was the predicate acts themselves which directly caused them injury.

RICO cases decided since *Bridge* and *Anza* strongly support the proposition that this Court's initial analysis, as reflected in the FAC Order, was correct and should have led to a denial of the motion to dismiss the SAC with respect to the Defendants here. For example, in *Morning Star Packing Co. v. SK Foods*, plaintiffs alleged that their competitors in the tomato processing industry violated RICO by using the wires to share bidding information with one another and bribe customers, thus causing plaintiffs to lose contracts they otherwise would have had. Civ. No. S-09-0208 KJM EFB, 2011 WL 4591069, at *3-4 (E.D. Cal. Sept. 30, 2011). The court distinguished *Anza* on the grounds that plaintiffs had alleged their lost contracting opportunities were "based squarely on the commercial bribery scheme rather than on a claim that defendants' wrongdoing may incidentally have caused the harm," *e.g.*, by providing themselves with a benefit (such as tax savings) they could then exploit to plaintiffs' detriment, as in *Anza*. *Id.* at *6; *see also Transcription Comm. Corp. v. John Muir Health*, No. C 08-4418 THE, 2009 WL 666943 (N.D. Cal. Mar. 13, 2009) (finding that plaintiffs sufficiently pled proximate cause by alleging the defendants' fraudulent misrepresentations to a third party led to lost customers). So too here. Plaintiffs have properly alleged that their injuries were the direct result of Defendants' scheme—

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

specifically, the false and fraudulent submissions made to Commerce that tarnished Plaintiffs' long-established reputation with their customers and forced Plaintiffs to incur substantial costs they otherwise would not have had to incur. Defendants Crawford and Katz, acting on behalf of the Chinese Garlic Association, were the *only* parties who requested that Harmoni be singled out for a mandatory review by Commerce. SAC ¶¶ 272-274.[3]

C. *The Court's Theory of Attenuated Damages is Misplaced*

The Court's decision to dismiss the SAC on proximate cause grounds also turned on its opinion that Plaintiffs' "attenuated" theory of injury "'would require a complex assessment to determine what portion of lost sales were the product of the competition [Defendants] made possible through their purportedly fraudulent conduct.'" SAC Order at 33 (citing *Anza*, 547 U.S. at 459). As an initial matter (and as discussed above), Plaintiffs have specifically pled several types of injury which have nothing to do with "increased competition" in the garlic market. As such, the Court's reliance on this rationale rests on an erroneous premise caused by its failure to consider all of the material allegations of the SAC.

However, *even if* Plaintiffs had *only* alleged injury due to increased competition, any difficulty in sorting out "what portion of lost sales" was due to Defendants' predicate acts would not warrant dismissal. As the case law makes clear, it is sufficient at the pleadings stage for Plaintiffs to have alleged a direct link between the conduct complained of and the *fact* of injury; the *extent* of that injury—which is what the Court appears to be concerned with here—is "inappropriate for resolution on a motion to dismiss." *Transcription Comm. Corp.*, 2009 WL 666943 at *13. In that case, which is virtually indistinguishable from this one, plaintiff, a transcription

[3] Notably, the court in *Morning Star* also held, following *Bridge*, that there is "[n]o precedent suggest[ing] that a racketeering enterprise may have only one "target" or that only a primary target may have standing." 2011 WL 4591069 at *6 (quoting *Baisch v. Gallina*, 346 F.3d 366, 375 (2d Cir. 2003)). Thus, even given the Court's conclusion that the "funneling" conduct at issue more directly targeted Customs and/or Commerce (because of the loss of tax revenue), that would not preclude a finding that the same conduct also directly targeted and proximately injured Plaintiffs. SAC ¶ 310.

service, alleged that defendant competitors deliberately deceived potential customers into believing that their competitive advantage stemmed from technological superiority rather than their use of outsourced labor, thus causing plaintiffs to lose customers and market share. *Id.* at *3. The court determined that, although defendants identified an array of intervening factors which would make it fiendishly difficult to ascertain the amount of damages to plaintiff (or even "whether such injuries occurred" *at all*), this did not constitute a defect in pleading. *Id.* at *12; *see also Mid Atl. Tel., Inc. v. Long Distance Servs., Inc.*, 18 F.3d 260 (4th Cir. 1994) (finding that the plaintiff should have the opportunity to develop claim that it was the direct target of defendant's scheme in discovery).[4] Similarly, in *Mendoza v. Zirkle Fruit Co.*, 301 F.3d 1163 (9th Cir. 2002), the Ninth Circuit reversed a district court's dismissal, on proximate cause grounds, of a RICO complaint brought by documented workers complaining that the market value of their wages had decreased as a result of defendant fruit companies' use of illegal labor. According to the appellate court, even though there were a number of "intervening factors" that would make sorting out what part of the injury to plaintiffs was due to defendants' conduct an "exceedingly complex" undertaking, this complexity was not a reason to dismiss the case but rather an issue to be resolved after factual and expert discovery. *Id.* at 1171.[5]

[4] In *Mid Atlantic*, plaintiff, a telephone services provider, alleged that competitor LDS had violated RICO by "engag[ing] in fraudulent use of the mails and telephone wires to entice customers away from Mid Atlantic and to eliminate Mid Atlantic as a competitor." 18 F.3d 260, 263 (4th Cir. 1994). In rejecting LDS's motion to dismiss, which was premised on how difficult it would be for Mid Atlantic to prove exactly how many customers it lost (if any) as a result of the alleged misconduct, the court held that Mid Atlantic's allegation of injury was enough to satisfy Rule 12(b)(6), and that it would be in a "better position to consider 'such factors as the foreseeability of the particular injury, the intervention of other independent causes, and the factual directness of the causal connection" *after* discovery. *Id.* at 264. The court therefore held that discovery should be allowed to determine whether the plaintiff was a direct target of defendants' fraudulent acts (*i.e.*, whether the artificially low billings were purposefully devised to lead to harm to Mid Atlantic by obtaining an unfair competitive advantage for the defendant in recruiting Mid Atlantic's customers). *Id.* at 263.

[5] Notably, the Court in *Mendoza* agreed with the district court in that case that the type of injury alleged was "direct," in that the "alleged scheme [] was intended to give the growers a contract advantage at the expense of the documented workers." *Id.* at 1170. The harm complained of in *Mendoza* was thus far less direct than the reputational and

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

Indeed, courts have determined that where a plaintiff has been the direct target of the RICO violation, that plaintiff has standing regardless of the extent of the damages incurred. *See* Mendoza, 301 F.3d at 1171 ("[I]t is important to distinguish between uncertainty in the fact of damage and in the amount of damage"); *Commercial Cleaning Servs., L.L.C. v. Colin Servs. Sys., Inc.*, 271 F.3d 374, 384 (2d Cir 2001) ("We have stated a plaintiff has standing where the plaintiff is the direct *target* of the RICO violation.") (emphasis added); *see also id.* at 385 ("There is no class of potential plaintiffs who have been more directly injured by the alleged RICO conspiracy than the defendant's business competitors, who have a greater incentive to ensure that a RICO violation does not go undetected or unremedied, and whose recovery would indirectly cure the loss suffered by these plaintiffs.").[6] Here, Plaintiffs have alleged that they were the direct—and only—target of Defendants' unlawful enterprise and suffered harm as a direct result of Defendants' misconduct. *See, e.g.*, SAC ¶ 310. As such, it was clear error for the Court to dismiss the SAC because of the potential "complexity" involved in assessing the amount of damages.

---

monetary injury to Harmoni at issue in this Motion (and in fact closer to the "lost market share due to increased competition" injury rejected by this Court in its November 14 Order).

[6] This same understanding applies in a number of comparable contexts, including inquiries into antitrust standing. *See, e.g.*, *Crimpers Promotions, Inc. v. Home Box Office*, 724 F.2d 290, 294-96 (2d Cir. 1983) (finding proximate injury where harm to the plaintiffs was the intended consequence of competitors' boycott). This is likely because RICO's proximate cause requirement derives from longstanding precedent in the antirust context that indirect purchasers may not recover damages as a result of anticompetitive conduct. *Ill. Brick Co. v. Illinois*, 431 U.S. 720, 736 (1977) (plaintiffs who suffer an injury that is "passed on" from the direct victims of a conspiracy lack standing under the federal antitrust laws); *Assoc. Gen. Contractors v. Cal. State Council of Carpenters*, 459 U.S. 519, 520-21 (1983) (similar); *Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 167-70 (1992) (extending this doctrine to the RICO context). This prohibition stemmed from the recognition that tracing damages through layers of affected parties would invite courts to engage in speculative quantitative analysis for which they are not well-equipped, as well as the desire to avoid subjecting defendants to duplicate recoveries. *See* AREEDA & HOVENKAMP, FUNDAMENTALS OF ANTITRUST LAW § 3d ed. 2008). Neither of these rationales applies here, where Plaintiffs are the most direct victims of the Enterprise's scheme and there is no risk whatsoever of duplicative recovery.

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

V. IN THE ALTERNATIVE, PLAINTIFFS SHOULD BE GRANTED AT LEAST ONE OPPORTUNITY TO AMEND THEIR RICO ALLEGATIONS TO ADDRESS ANY DEFICIENCIES IDENTIFIED BY THE COURT

Even if the Court declines to alter or amend its prior holding that the allegations in the SAC fail to meet RICO's proximate cause requirement, it should grant Plaintiffs leave to amend the SAC. First, because of the Court's decision on the FAC, Plaintiffs were never given any notice that their RICO allegations were in any way deficient as to any of the Defendants. To the contrary, the Court denied the Hume Defendants' motion to dismiss Plaintiffs' RICO claims and dismissed the Montoya Defendants—who participated in the exact same misconduct—on grounds of personal jurisdiction. As such, Plaintiffs never perceived any need to amend or add to those allegations and deserve at least one opportunity to do so. Second, and relatedly, there is no indication at this stage that amendment would be futile. Indeed, if granted leave to file an amended complaint, Plaintiffs expect to add considerable new details regarding their RICO allegations, including as to proximate cause and injury as well as additional predicate acts (including as to Huamei and Li[7]) that have come to light since the SAC was filed.

A. *Courts Freely Grant Leave to Amend, Particularly Where Claims are Dismissed for the First Time*

Under the Federal Rules, leave to amend should be "freely give[n]" where justice so requires, and this policy is to be applied with "extreme liberality." Fed. R. Civ. P. 15(a)(2); *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001) (emphasis added). Pleading is not "a game of skill," in which one misstep "may be decisive to the outcome [but rather] the purpose of pleading is to facilitate a proper decision on the merits." *Conley v. Gibson*, 355 U.S. 41, 48 (1957). To the contrary, and as the Supreme Court explained decades ago, the objective of Fed. R. Civ. P. 15 is to give a plaintiff "an opportunity to test his claim on the merits." *Foman*

[7] As discussed above, the SAC Order also held—for the first time—that Plaintiffs had not adequately alleged a pattern of racketeering against Defendants Li and Huamei. SAC Order at 28-29. Plaintiffs thus seek leave to amend their complaint with regard to the pattern element as well for those two Defendants.

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

v. Davis, 371 U.S. 178, 182 (1962).

That guidance has resonated particularly strongly in the Ninth Circuit, which has repeatedly reiterated that courts may decline to grant leave to amend *only* if there is *strong evidence* of "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment, etc." *Foman v. Davis*, 371 U.S. 178, 182 (1962) (emphases added); *see also* *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003); *Stowers v. WinCo Foods LLC*, 2014 WL 1569474 (N.D. Cal. 2014). Indeed, "at least one district court in this circuit has granted leave to file an amended complaint realleging claims dismissed with prejudice." *See* *Benamar v. Air-France-KLM*, 15–CV–02444–CAS(JPRx), 2015 WL 4606751, at *2 (C.D. Cal. July 31, 2015).

Here, Plaintiffs have not been afforded a fair opportunity to test their RICO claims on the merits, and there is *no evidence*—let alone strong evidence—of *any* undue delay, bad faith, dilatory conduct, prejudice, or repeated failures to cure deficiencies by Plaintiffs. In its FAC Order, the Court specifically held that Plaintiffs had sufficiently pled proximate cause with respect to the Hume Defendants (Hume, Li, Kwo Lee, and Huamei) and the Montoya Defendants (Crawford, Katz, and Montoya). FAC Order at 48. It further held that Huamei and Li had engaged in a pattern of racketeering activity. It denied the Hume Defendants' motion to dismiss the RICO claims in its entirety, and made very clear that its dismissal as to the Montoya Defendants was based on jurisdictional concerns and not on any deficiencies in the RICO pleadings against them (which were substantively identical to those alleged against the Hume Defendants). Indeed, in granting Plaintiffs leave to amend with regard to the Montoya Defendants, the Court said *nothing* about RICO, but made clear that the purpose of that amendment was solely "to cure the deficiencies in their FAC as to personal jurisdiction over the Montoya Defendants." FAC Order at 24.

As a result, the Court's decision to dismiss those claims with prejudice constituted clear and reversible error. The SAC Order was the *first dismissal* of the RICO claims against the Hume or Montoya Defendants on non-jurisdictional grounds, and the *first indication* Plaintiffs *ever* received that their RICO allegations were not sufficient to state a claim. Under such circumstances, it is almost universal for courts in this district and others to grant leave to amend. *See* *United States v. $11,500.00 in U.S. Currency*, 710 F.3d 1006, 1013 (9th Cir. 2013) (noting that with regard to pleadings, the Ninth Circuit's "general practice" is to freely give leave to amend); *see also* *U.S. ex rel., Lee v. Smithkline Beecham*, 245 F.3d 1048, 1053-53 (9th Cir. 2006) (finding district court erred in denying leave to amend where amendment "would not necessarily have been futile"); *Schreiber Dist. Co. v. Serv-Well Furniture Co., Inc.*, 806 F.2d 1393 (9th Cir. 1986) (finding district court abused its discretion in dismissing the RICO counts with prejudice); *Brausch v. Stryker Corp.*, 630 F.3d 546, 562 (7th Cir. 2010) ("Generally, if a district court dismisses for failure to state a claim, the court should give the party one opportunity to try to cure the problem, even if the court is skeptical about the prospects for success."). Indeed, even the cases relied upon by the Court in support of its decision to dismiss with prejudice make clear that the district court's discretion to deny leave to amend is best exercised "where the plaintiff has *previously been granted* leave to amend and has subsequently failed to add the requisite particularity to its claims." *See* *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 1007 (9th Cir. 2009) (emphasis added).[8] That could not be further from the situation here, where the Court explicitly informed Plaintiffs that the requisite particularity actually *existed* before reversing itself with respect to the SAC and denying them a single opportunity to replead. Under such circumstances, it would be an abuse of discretion, as well as inequitable and unjust, to maintain the dismissal of Plaintiffs' claims with prejudice.

Nor would any amendment be futile, as the Court suggests. A claim is

[8] Notably, the plaintiff had at least two opportunities to plead scienter before being dismissed with prejudice. *Zucco Partners*, 552 F.3d at 989.

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

considered futile and leave to amend is considered inappropriate only "if there is no set of facts that can be proved under the amendment that would constitute a valid claim." *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988) (internal citations omitted). However, "denial on this ground is rare and courts generally defer consideration of challenges to the merits of a proposed amended pleading until after leave to amend is granted and the amended pleading is filed." *Netbula, LLC v. Distinct Corp.*, 212 F.R.D. 534, 539 (N.D. Cal. 2003).

Here, not only are Plaintiffs in a position to supplement their pleadings with additional, specific factual allegations that would cure the deficiencies identified by the Court in the SAC Order, there is already information in the record which suggests the same. In support of Plaintiffs' Motion for Preliminary Injunction, for instance, Plaintiffs submitted a declaration from Rick Zhou, Chief Financial Officer of Harmoni International Spice, Inc., stating that:

> The false and fraudulent statements in Crawford and Katz's submissions to the DOC have already harmed Harmoni's business, damaged Harmoni's relationships with its customers, and negatively impacted the good will that Harmoni has built up in the industry. . . . In particular, some of Harmoni's customers who were aware of these false allegations made by Defendants have stopped doing business with Harmoni and have started to do business with QTF and other importers, causing Harmoni lost sales. Other Harmoni customers are skeptical that Zhengzhou Harmoni's current favorable duty rate will continue on account of the farmer's fraudulent request before the DOC, and have started to look for other suppliers to replace Harmoni.

Dkt. No. 27-7 at ¶¶ 21-22.

Although Plaintiffs contend that these allegations are already referenced repeatedly in the SAC, *see* SAC ¶¶ 11, 129, 255, 268, 302, should the Court disagree and grant leave to amend the complaint, Plaintiffs could make those references to Mr. Zhou's sworn testimony more explicit and supply additional detail as to the injuries suffered by Plaintiffs as a direct result of Defendants' predicate acts. Moreover, Plaintiffs would be able to allege additional and more recent instances of Defendants' commission of unlawful predicate acts, including (most egregiously) the submission of false information to United States Customs and Border Protection at the behest of

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

the Enterprise which directly led to the improper impoundment of thousands of tons of Harmoni garlic destined for a large U.S. customer and cost Plaintiffs several million dollars in demurrage, port costs, legal fees, and lost sales, as well as incalculable and irreparable harm to one of Harmoni's most valuable customer relationships. As *Bridge, Mendoza, Transcription Comm. Corp.* and *Morning Star* make clear, allegations of this type of injury (*e.g.*, the loss of sales or customers as a direct result of the misconduct alleged) are more than sufficient to establish proximate cause at the pleadings stage. *See supra* at Section V.B and V.C. Accordingly, far from being futile, allowing Plaintiffs even a single opportunity to amend their RICO claims is likely to result in the reinstatement of this litigation against each of the Hume and Montoya Defendants, and the ability of Plaintiffs to ultimately "test [their] claims on the merits," as justice requires. *Foman*, 371 U.S. at 182; *see also* *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 701 (9th Cir. 1990) (("[L]eave to amend should be granted 'if it appears at all possible that the plaintiff can correct the defect.'") (internal citations omitted)).

VI. CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully request that the Court (1) alter or amend the SAC Order to deny in their entirety the motions to dismiss brought by Defendants Hume, Kwo Lee, Montoya, Crawford, and Katz, and to dismiss without prejudice and grant leave to amend the SAC with regard to Defendants Huamei and Li; or (2) in the alternative, alter or amend the SAC Order to dismiss the claims against all seven of the above-named Defendants without prejudice, and grant Plaintiffs leave to amend the SAC as to same.

Dated: December 12, 2016

WINSTON & STRAWN LLP

By: /s/ *John E. Schreiber*
John E. Schreiber
Jeffrey L. Kessler
A. Paul Victor
George E. Mastoris

Attorneys for Plaintiffs HARMONI INTERNATIONAL SPICE, INC. and ZHENGZHOU HARMONI SPICE CO., LTD.

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543